

**JERROLD OPPENHEIM**  
57 Middle Street  
Gloucester, Mass. 01930  
+1(978)283-0897 . Fax +1(978)283-0957 . JerroldOpp@tgic.net

August 30, 2001

Mary Cottrell, Secretary  
Department of Telecommunications and Energy  
One South Station  
Boston, Mass. 02110

RE: Bay State Gas Co., supply purchase contract, DTE 01-62

Dear Secretary Cottrell:

Petitioners to Intervene Low-Income Energy Affordability Network et al. seek leave to file this response to the Opposition of Bay State Gas Co. (the Company) to their Petition to Intervene.

The Company's objection to Petitioners' application for intervention is nothing more than a wish to avoid questions about whether its proposed supply purchase will contribute to unreasonable retail price volatility. Further, the Company's objection would reverse principles of intervention by representatives of relevant public interests, substantially and specifically affected by proposed decisions, long-settled by Department precedent. The Company's objection should be rejected and Petitioners should be granted leave to intervene.

As best Petitioners can determine, the Company interposes five arguments, all without merit:

1. The Company asserts that there have been other opportunities to raise the issue Petitioner raises here. This may be true but it is immaterial. There is no better time to raise the issue of whether a purchase contract may contribute to unreasonable price volatility than at the review of that contract.<sup>1</sup>
2. The Company asserts that the Attorney General represents the interests of all ratepayers so no one else may do so. However, to our knowledge, the Attorney General's representation of ratepayers has never been held to bar intervention of ratepayers with a particular interest different from ratepayers in general. Indeed, one of the cases cited by the Company affirms the Department's allowance of an individual ratepayer to intervene over the objection that the

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<sup>1</sup> The Company raises the red herring issue of billing responses to price volatility, which Petitioners do not raise here. Petitioners' focus in this docket is on the reasonableness of the price terms of the contract whose price the Company would later seek to pass along.

then-existing Massachusetts Consumers Council represented all ratepayers. Boston Edison Co. v. DPU, 375 Mass. 1, 44-46 (1978). Accord, Wilmington v. DPU, 340 Mass. 432 (1960) (presence of Attorney General does not limit intervention by others). The interests of low-income ratepayers, who have particular difficulty in paying volatile prices, is such a particular interest.

Aside from that, the Department's web site docket sheet for this case reveals no expression of interest by the Attorney General in participating in this case. Inquiry of the Attorney General's office by the undersigned confirmed its intention not to participate in the merits of this case.

All the other cases cited by the Company either support or are silent on the issue of whether Petitioners have a right of intervention in this case. One case cited by the Company only stands for the proposition that an intervenor seeking to protect its interests as a competitor (rather than customer interests) does not have a sufficiently specific and substantial interest to support a right of intervention. Cablevision Systems Corp. v. DPU, 428 Mass. 436 (1998). A third case cited by the Company does not exist. "Newton v. DPU, 366 Mass. 667 (1975)." Perhaps the Company meant to cite Newton v. DPU, 367 Mass. 667 (1975), which holds that the City had a statutory right to intervene. Finally, the Company cites Robinson v. DPU, 835 F.2d 19 (1<sup>st</sup> Cir. 1987), which holds that a federal statute not at issue here – the Public Utility Regulatory Policies Act of 1978 (PURPA), 16 USC secs. 2601 et al. -- does not establish a right to intervention where a non-lawyer was permitted limited intervention status by cross-examining and presenting evidence through the Attorney General.

3. The Company asserts that Petitioners are statewide organizations. This is true and, if anything, establishes that Petitioners have an interest in the Company's service territory. Indeed, the Department has frequently recognized interests with an even larger geographic base, such as those of the Conservation Law Foundation of New England and the internationally active Union of Concerned Scientists.
4. The Company asserts that Petitioners lack standing because they are not ratepayers, and do not represent individual ratepayers, although ratepayers would lack standing anyway because they would not be substantially and specifically affected by a decision in this docket. The idea that ratepayers are not substantially and specifically affected by a purchase contract for which they will be required to pay falls of its own weight.
5. The Company asserts that Petitioners cannot establish standing based on their relationship with the Company's customers. The Company does not address the long history of this Department's granting intervenor status to organizations that vindicate such customer interests as clean air and water (e.g., Conservation Law Foundation), industrial development ratemaking (e.g.,

Associated Industries of Massachusetts), energy efficiency (e.g., Union of Concerned Scientists), and low-income protection (e.g., National Consumer Law Center). The Department has a long-standing and well-considered policy of allowing intervention by organizations that represent customer interests.

Most telling, however, is the Company's complete failure to address one stated basis for Petitioners' application to intervene. Petitioners are social service agencies, and organizations thereof, that are specifically and substantially affected each time the price of natural gas on the Company's system spikes. Where a purchase contract permits volatile prices (e.g., by following a spot market index rather than specifying a stable price), the price spikes that can result causes bills that are unaffordable for low-income customers of the Company. Many of these customers will seek assistance from Petitioners, who offer bill assistance as well as energy efficiency programs. Indeed, Petitioners' bill assistance and efficiency programs directly benefit the Company, both by providing cash to the Company directly and also by providing bill reductions to customers that make it more likely that they will be able to pay their bills. Price volatility taxes the resources of Petitioners to provide these services by increasing the demand for them, to the specific and substantial disadvantage of both Petitioners and their clients (who are also Company customers); ironically, this sequence of events also disadvantages the Company by reducing the likelihood of bill payment. Ultimately, this also operates to the disadvantage of all ratepayers, who may be asked to cover in their rates an increase in bad debt.

Finally, Petitioners note that (the Company's statement to the contrary notwithstanding) they have indeed approached the Company with the hope of settlement.

For all these reasons, Petitioners request that the Department allow their Petition to Intervene.

Respectfully submitted,

cc:

John Craven, Esq., Hearing Officer  
John DeTore, Esq., for the Company